IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Chamber Summons No. 1599 of 2004
in
Execution application no. 387 of 2003
in
Arbitration Petition NO. 433 of 2001
in
Award No. 17 of 1994

Mrs. Jayaben Hasmukhlal Parikh ... Plaintiff
vs.
Ajnee Finance Limited and ors. ... defendants

Mr. U. P. WARUNJIKAR for Plaintiff
Mr. Amit Shastri i/b. Khilnani & Co., for defendants

CORAM: **ROSHAN DALVI J.**
Date: 20/12/2005

P.C.

The applicant is the wife of the Director of the defendants against whom the award has been passed. Certain properties, movable and immovable have been attached pursuant to the execution of the award. The applicant has produced the original share certificate of the flat which has been attached, being flat no. 9, Neelkanth Park, Near Rajawadi Garden, Ghatkopar (East), Mumbai. The original share certificate is dated 21.11.1973 bearing no. 9 and issued in the

name of the applicant. The reverse of the certificate shows no transfer of the flat at any time. The applicant has produced further corroborative documents such as maintenance bills and receipts issued by the Society as well as electricity bill. The documents seem to be prima facie genuine. The flat still stands in the name of the applicant since 1973. It therefore cannot be attached in execution of the award. The attachment in respect of the flat must therefore be raised.

The applicant has also produced certain bills showing instalments paid in respect of the refrigerator sold to the applicant by one M/s. Niraj Electronics. All these documents are also in the name of the applicant and prima facie show the title to the movable property in the name of the applicant. That property also cannot be attached.

The applicant has also produced certain documents relating to the import of a washing machine on 10.10.1989 by one Virendra Popatia, along with one certificate issued by the State Bank of India in the

name of V.S. Popatia for the import of electronic items which require those formalities in 1989 when it was imported. The applicant has also produced a certificate signed by V. S. Popatia on 10.10.1989. Those documents seems to be genuine showing their age ex facie. The applicant would be not able to prove these documents except by direct evidence of Virendra Popatia. The applicant has not shown the availability of this witness. Hence prima facie these documents cannot be considered for raising the attachment at this stage.

The applicant has produced a delivery challan for the Onida TV purchased in her name on 19.10.1989 . The applicant would not be able to prove that document except by direct evidence of the signatory of the delivery challan. The applicant has not shown his availability at all. Based only on that document simplicitor the attachment on the movable item cannot be raised at this stage.

There are certain other movables which are

attached as shown in Exhibit “B” to the Chamber Summons. There are no documents produced in respect thereof. Hence all the movables except one refrigerator are seen to be correctly attached.

Hence the following order:

The attachment levied on flat no. 9, Neelkanth Park, Near Rajawadi Garden, Ghatkopar (East), Mumbai and on one refrigerator of General Electronic Appliances Limited is raised. The attachment levied on other movables is not raised. The Plaintiff shall be entitled to execute the award in respect of the movables for which the attachment is not raised. The original documents produced by the applicant is returned to her advocate. Chamber Summons disposed of. No order as to costs.

(ROSHAN DALVI J.)